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9 **UNITED STATES DISTRICT COURT FOR THE**
EASTERN DISTRICT OF WASHINGTON

10
11 THOMAS A. WAITE,

12 Plaintiff,

13 vs.

14 THE CHURCH OF JESUS CHRIST OF
15 LATTER DAY SAINTS d/b/a
16 CORPORATION OF THE PRESIDING
BISHOP OF THE CHURCH OF JESUS
17 CHRIST OF LATTER DAY SAINTS,
a Utah corporation, d/b/a
CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
18 JESUS CHRIST OF LATTER DAY
SAINTS, a Utah corporation;
DONALD C. FOSSUM; and
STEVEN D. BRODHEAD,

19
20 Defendants.

No. CV-05-399-EFS

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26 **DECLARATION OF**
RICHARD C. EYMAN
IN RESPONSE TO
AFFIDAVIT OF
BRIAN T. REKOFKE IN
SUPPORT OF MOTION
TO COMPEL

I, RICHARD C. EYMAN, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am one of the attorneys for the plaintiff in the above-referenced matter. I make this declaration from my own personal knowledge.

1 2. I have reviewed the Affidavit of Brian T. Rekofke in Support of
2 Motion to Compel filed on April 11, 2007.
3

4 3. On November 9 and 10, 2006, plaintiff conducted discovery
5 depositions in Salt Lake City, Utah. In attendance, in addition to witnesses, were
6 Stephen Nordstrom and myself for plaintiff, Brian Rekofke and Thom Walk,
7 attorneys for the Church defendants, Andrew Smythe for defendant Brodhead,
8 Richard Black, a Church representative, Gavin Bohne, a legal videographer, as
9 well as Terry Hansen Cronenwhett, court reporter.
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11 4. During the deposition of Donald C. Fossum, who was the
12 missionary driver of the pickup at the time of the collision, the following
13 exchange occurred:
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15 Q: (By Mr. Nordstrom) Okay. Let me kind of go back to
16 the beginning again, when I talked to you about who you may have
17 spoken with regarding this accident. You had a conversation
18 sometime ago with Mr. Walk. Is that correct?

19 A: Yeah.

20 Q: Was that down in Provo?

22 A: Yeah. That was at my house.

23 Q: Do you remember the nature of that conversation?

24 A: He just asked me questions about it, and I don't recall
25 everything. I have talked about it with so many people and so many
26 times that it's kind of hard to distinguish.

1 Q: Sure. Just tell me what you do remember of that
2 conversation involving him.

3 MR. REKOFKE: Excuse me. That would be attorney-client
4 privilege.

5 MR. NORDSTROM: I didn't realize that Mr. Walk was an
6 attorney for Mr. Fossum. I thought he was – in fact, I don't – did
7 I ever get a notice of appearance from anybody but you, I think and
Andy. Am I missing something here?

8 MR. REKOFKE: You are missing that he is a lawyer for
9 various church entities. He investigated that accident. It's the same
10 thing under Heidebrink versus Moriwaki in the state of the
Washington.

11 It's privileged, so I am instructing Mr. Fossum not to answer
12 any questions about – other than he's already answered the general
13 tenor of the conversation and when it occurred. He's not going to
14 answer any questions about his discussions with Mr. Walk.

15 Fossum deposition, page 17, lines 3-25 through page 18, lines 1-6.

16 5. At the next break, I challenged Mr. Rekofke on the issue of whether
17 he represented any missionaries other than Mr. Fossum and he conveyed his view
18 that all missionary witnesses were "off limits." I countered that unless they were
19 "speaking agents," there could not be a valid attorney/client privilege objection.

20 6. Later that day in a discussion that I believe was off the record, the
21 issue came up again with regard to direct contact between plaintiff's lawyers and
22 former missionaries. I cited the case of *Wright v. Group Health Hospital*, 103

1 Wn.2d 192, 691 P.2d 564 (1984) to Mr. Rekofke and he acknowledged that he
2 had forgotten about that case and said that it might apply.
3

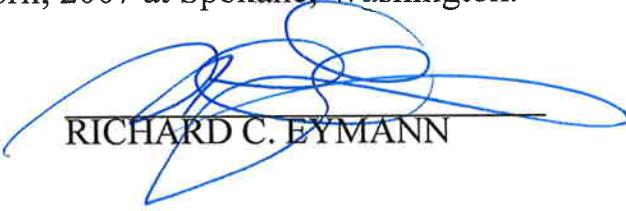
4 7. During subsequent breaks during a deposition that day, Mr. Rekofke
5 and I were discussing, outside of Mr. Nordstrom's presence, the proposed
6 dismissal stipulation of one of the Church entities and he inquired regarding Mr.
7 Nordstrom's contact with missionaries. I told him that it was my position that we
8 had every right to contact former missionaries who were witnesses unless they
9 were speaking agents. He then said he wanted to go back to his office and take a
10 look at the Wright case and that if he felt that he was on solid ground, that he
11 wanted to get a Court ruling. I agreed that would be fine.
12

13 8. I do not believe I ever spoke with Mr. Nordstrom concerning that
14 conversation I had with Mr. Rekofke until recently.
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16 9. When I returned to the office from Salt Lake Cy in November, I read
17 the Wright case and reconfirmed that I was correct. I assumed that Mr. Rekofke
18 had done the same as weeks passed and he did not bring a motion for clarification
19 by the Court. Obviously, if he brought a motion, Mr. Nordstrom and myself
20 would have had immediate notice that he continued to maintain that we could not
21 have direct contact with former missionary witnesses.
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1 10. It was not until after Mr. Nordstrom had provided a copy of
2 James T. Ross' affidavit to defense counsel, that I became aware that
3 Mr. Rekofke was of the belief that he and I had reached an agreement on
4 contacting missionary witnesses. In any event, I do not believe that a solid no
5 contact agreement was reached, certainly nothing in writing, by letter, or on the
6 record in a deposition. Rather, we did agree that the defense could check the case
7 I cited as authority for allowing contact, and if he felt he was correct, he could
8 seek Court affirmation.

11 DATED this 16th day of April, 2007 at Spokane, Washington.

12 
13 RICHARD C. EYMANN